

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

*

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v.

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CRIMINAL ACTION NO. 07-00410-KD

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ARISTEDES VICTOR BALBUENA

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PRELIMINARY ORDER OF FORFEITURE

WHEREAS, in the Indictment in the above-entitled case, the United States sought forfeiture of property used to facilitate drug transactions of defendant Balbuena, and/or property which represented drug proceeds, to the United States of America pursuant to Title 21, United States Code, Section 853;

AND WHEREAS, based upon the guilty plea entered on March 20, 2008, by defendant Balbuena to Count One of the Indictment, charging a violation of Title 21, United States Code, Section 846, conspiracy to possess with intent to distribute cocaine, and Count Two, alleging that certain seized assets identified therein as well as an amount of money representing his drug proceeds is subject to forfeiture pursuant to Title 21, United States Code, Section 853, and the Plea Agreement and Factual Resume entered into between the United States and defendant Balbuena, and for the reasons stated;

AND WHEREAS, based upon the Stipulation and Consent Judgment for Forfeiture in which defendant Balbuena stipulated and agreed to forfeit to the United States his interest in the assets listed therein and as set forth in Count Two of the Indictment, it is hereby

ORDERED, ADJUDGED AND DECREED, that pursuant to Title 21, United States Code, Sections 846 and 853, and Federal Rule of Criminal Procedure 32.2(b), the interests of defendant Balbuena, in the following is hereby condemned and forfeited to the United States for

disposition according to law:

(1) A necklace with a diamond cross pendant.

(2) Lot 45, Monarch Subdivision, First addition, according to a plat thereof recorded in map Book 60, page 81 of the records in the Office of the Judge of Probate, Mobile County, Alabama.

AND WHEREAS, by virtue of said guilty plea and Plea Agreement, the United States is now entitled to, and it should, pending possible appeal herein, reduce all of the above described assets to its possession and notify any and all potential third parties who have or may have an interest in any of the above-described assets, pursuant to Title 21, United States Code, Section 853 and Rule 32.2(b) of the Federal Rules of Criminal Procedure.

NOW THEREFORE, IT IS HEREBY **ORDERED, ADJUDGED AND DECREED:**

That based on the Plea Agreement, the factual resume, and the guilty plea, and Fed.R.Crim.P. 32.2(b)(3), the right, title and interests of defendant Balbuena, in the above described assets are hereby forfeited to and vested in the United States of America for disposition in accordance with law, subject to the provisions of Title 18, United States Code, Section 853(n).

That the aforementioned forfeited above-described assets are to be held by the United States Marshals Service in their secure custody and control.

That pursuant to Title 21, United States Code, Section 853(n)(1), the United States Marshal forthwith shall publish at least once a week for three successive weeks in a newspaper of general circulation, notice of this Order, notice of the Marshals intent to dispose of the above described assets in a manner as the Attorney General may direct and notice that any person, other than the defendant Balbuena, having or claiming a legal interest in the above-described forfeited above-described assets must file a petition with the Court within thirty (30) days of the final publication of notice or of their receipt of actual notice, whichever is earlier.

This notice shall state that the petition shall be for a hearing to adjudicate the validity of the petitioner's alleged interest in above-described assets, shall be signed by the petitioner under penalty of perjury, and shall set forth the nature and extent of the petitioner's right, title or interest in the forfeited above-described assets and any additional facts supporting the petitioner's claim and the relief sought.

The United States may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the above-described assets that are the subject of the Order of Forfeiture, as a substitute for published notice as to those persons so notified.

After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Civil Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

The United States shall have clear title to the above-described assets following the Court's disposition of all third-party interests, or, if none, following the expiration of the period provided in Title 21, United States Code, Section, 853(n)(2) for the filing of third-party petitions.

Pursuant to Fed. R. Crim. P. 32.2(b)(3), and the Consent Decree for Forfeiture signed by the parties, this Preliminary Order of Forfeiture shall become final as to the defendant at the time of execution and shall be made part of the sentence included in the judgment. If no third party files a timely claim, this Order shall become the Final Order of Forfeiture, as provided by Fed. R. Crim. P. 32.2(c)(2).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED: That, based upon the amount of drug proceeds received by defendant Balbuena, a money judgment in the amount of \$100,000.00 is entered against defendant Balbunea.

Pursuant to Fed. R. Crim. P. 32.2(e), the United States may, at any time, move to amend this order of forfeiture to substitute property having a value not to exceed \$100,000.00 to satisfy the money judgment, in whole or in part.

The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

The Clerk of the Court shall forward five (5) certified copies of this Order to Assistant U.S. Attorney Deborah A. Griffin, Southern District of Alabama.

DATED this the 28th day of July, 2008.

s/ Kristi K. DuBose
KRISTI K. DUBOSE
UNITED STATES DISTRICT JUDGE